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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
FIRST GENERAL COUNSEL'S REPORT

MUR: 6679

DATE COMPLAINT FILED: October 31, 2012

DATE OF NOTIFICATION: November 7, 2012

DATE OF LAST RESPONSE: December 21, 2012

DATE ACTIVATED: January 22, 2013

EXPIRATION OF SOL: October 26, 2017
to November 1, 2017

COMPLAINANT: Chris Redfern, Ohio Democratic Party

RESPONDENTS: Jim Renacci for Congress and Russell Corwin in his
official capacity as treasurer¹
Congressional Leadership Fund and Caleb Crosby
in his official capacity as treasurer²

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441a(a)

2 U.S.C. § 441a(f)

11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED: Disclosure Reports

OTHER AGENCIES CHECKED: None

I. BACKGROUND

The Complaint alleges that the Congressional Leadership Fund (the "Fund"), an independent expenditure-only political committee, coordinated its television advertisement purchases with Jim Renacci for Congress ("Renacci Committee") in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

¹ On December 19, 2012, Renacci for Congress amended its Statement of Organization to name Corwin as treasurer.

² On December 4, 2012, the Congressional Leadership Fund amended its Statement of Organization to name Crosby as treasurer.

1 According to the Complaint, on October 23, 2012, the Renacci Committee
2 cancelled \$850,000 worth of broadcast television advertising reservations through
3 election day, even though the Committee had ample money on hand for the reserved ads.
4 See Compl. at 1 (Oct. 31, 2012). The next day, the Complaint alleges, the Fund "mov[ed]
5 to replace the cancelled ad buys" with \$300,000 worth of new ads attacking Renacci's
6 election opponent, Betty Sutton. *Id.* The Complaint concludes that the "seamlessly
7 speedy manner" in which the Renacci Committee's ads were replaced by ads purchased
8 by the Fund demonstrates that the Committee and the Fund were "materially involved"
9 with each other's ad timing, intended audience, and means of communication. *Id.*

10 Respondents deny the coordination allegation. The Fund's response rests on
11 sworn statements of its president and its media vendor.

12 Based on our review of the record, we recommend that the Commission find no
13 reason to believe that Respondents violated the Act and close the file.

14 II. ANALYSIS

15 A. Factual Background

16 The Renacci Committee is the principal campaign committee for Representative
17 James B. Renacci, a 2012 candidate in Ohio's 16th Congressional District. Renacci's
18 opponent was Betty Sutton. The Fund registered with the Commission as an independent
19 expenditure-only political committee on October 24, 2011,³ and has filed regular
20 disclosure reports and independent expenditure notices since that date.

³ See <http://images.nictusa.com/pdf/996/11030681996/11030681996.pdf>.

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Over \$11 million in independent expenditures was spent in connection with this race, including \$2,743,676.60 by the Fund, in opposition to Sutton, as follows:⁴

<u>Amount</u>	<u>Date</u>
\$442,532.00	09/14/2012
\$ 99,975.00	09/14/2012
\$ 15,000.00	09/14/2012
\$ 15,000.00	09/21/2012
\$442,112.00	09/21/2012
\$601,854.00	10/22/2012
\$115,000.00	10/22/2012
\$ 15,000.00	10/22/2012
\$630,124.00	10/25/2012
\$264,058.00	10/29/2012
\$ 15,000.00	10/29/2012
\$ 88,021.60	11/02/2012

The Renacci Committee raised and spent over \$3.3 million.

The Renacci Committee denies the Complaint's underlying factual assertions and claims that:

- The Renacci Committee made its initial reservation of broadcast advertising points—not an actual purchase of advertising time—in the Cleveland media market in April 2012 for the 2012 general election, with the full understanding that the decision on how and when to air those points would be subject to change as the election approached.
- In August 2012, the Renacci Committee made a strategic decision to air advertisements earlier than it had anticipated. Consequently, many of the broadcast points that the Renacci Committee had initially reserved for the final weeks of the campaign were pushed forward as the Renacci Committee began purchasing air time in August.
- At no point had the Renacci Committee reserved \$850,000 in advertising for the final two weeks of the campaign as alleged. The Renacci Committee had reserved approximately \$900,000 worth of ad time over the final four weeks of the campaign. The initial reservation for the final two weeks amounted to approximately \$450-\$500,000. But due to the Renacci Committee having spent more on earlier advertising, the Committee spent only approximately \$200,000 on

⁴ The list is drawn from Schedule E of the Fund's disclosure reports.

1 television during the final two weeks,⁵ a decision based solely on the amount of
2 money that the Renacci Committee had left to spend.

- 3
- 4 • The Renacci Committee did not have sufficient money on hand to fund the
5 previously reserved ad buys; in fact, the candidate loaned \$100,000 to the Renacci
6 Committee in the closing days of the race to finance the final broadcast television
7 buy, a buy that the Complaint seems to suggest never occurred.

8 Renacci Committee Resp. at 1-3 (Nov. 20, 2012). The Renacci Committee also provided
9 “network records” purporting to show that it began airing broadcast ads on August 27,
10 2012, and stayed on the air every week through the election. *See* Resp., Attach. The
11 Renacci Committee’s response is unsworn.

12 The Fund also asserts in its response—with supporting affidavits—that ad buys
13 shortly before the election resulted from strategic and budgetary considerations and *not*
14 from any coordination with the Renacci Committee, and states as follows:

- 15 • On or about October 9, 2012, the Fund’s media vendor, American Media &
16 Advocacy Group (“American Media”), reserved television advertising time from
17 October 19 through November 6, 2012, for the Fund’s independent expenditures
18 opposing Sutton. The amount and dates were based on internal budgetary and
19 strategic considerations, which were informed by real-time advertising data
20 provided by American Media, pursuant to its service agreement with the Fund.
21
- 22 • Relying upon American Media’s data, the Fund continued to monitor television
23 advertising spending for and against Sutton and Renacci. According to these data,
24 organizations supporting Sutton or opposing Renacci had purchased significant
25 advertising time. As a result, on or about October 23, 2012, the Fund directed
26 American Media to increase the Fund’s television advertising opposing Sutton by
27 \$300,000.
28
- 29 • The Fund had already made substantial independent expenditures in connection
30 with Renacci’s election. Prior to the \$300,000 increase on October 23, 2012, the
31 Fund had spent \$2.4 million during September and October 2012.

⁵ The Renacci Committee disclosed \$191,230.84 in disbursements for television advertising on and after October 23, 2012. *See* Amended 2012 Post-General Report at 97, 98, 102, and 122 (filed Jan. 31, 2013).

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1 Fund Resp. at 2-5 (Dec. 21, 2012). These assertions are based on sworn statements by
2 American Media's president, Robin D. Roberts, and the Fund's president, Brian O.
3 Walsh.

4 Both affidavits specifically deny any coordinating activity between the Fund and
5 the Renacci Committee. Roberts states that he confirmed with the American Media
6 employees who provided services to the Fund (1) that they did not have any
7 communications with any candidate, candidate committee, or political party committee
8 regarding media-buying activities performed by American Media on behalf of the Fund
9 and (2) that American Media did not otherwise coordinate any services it provided to the
10 Fund with any candidate, candidate committee, or political party committee. Robin D.
11 Roberts Aff. ¶ 7 (Dec. 20, 2012). Roberts' affidavit states that American Media takes
12 strong measures to avoid coordination by, for example, vetting "new work engagements"
13 and separating personnel. *Id.* ¶¶ 5-6. Walsh, in his affidavit, avers that he is familiar
14 with the Commission's coordination regulations and that the Fund "did not rely on
15 information from the Renacci campaign that would have resulted in coordination
16 pursuant to these regulations." Brian O. Walsh Aff. ¶ 9 (Dec. 20, 2012).

17 The Fund also asserts that the Complaint does not describe or allege any conduct
18 that constitutes coordination. Fund Resp. at 5. The Fund contends that, even if true, the
19 basis for the Complaint—that the Fund increased its television advertising campaign soon
20 after the Renacci campaign decreased its television advertising—does not support the
21 Complaint's coordination claim. *Id.* at 7.

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B. Legal Analysis

The issue here is whether the Fund made a coordinated communication, resulting in an excessive in-kind contribution to the Renacci Committee. During the 2012 election cycle, it was unlawful to make a contribution to a candidate and the candidate's authorized political committee with respect to any election for federal office that in the aggregate exceeded \$2,500. 2 U.S.C. § 441a(a)(1)(A). The Act also provides that no candidate or political committee may knowingly accept a contribution in violation of section 441a. *Id.* § 441a(f). And a coordinated communication is considered an in-kind contribution from the person to that candidate and is subject to the limits, prohibitions, and reporting requirements of the Act. 11 C.F.R. § 109.21(b).

Under Commission regulations, a communication is coordinated with a candidate, authorized committee, or an agent thereof if it meets a three-part test: (1) it is paid for by a person other than the candidate or authorized committee; (2) it satisfies at least one of five "content" standards in 11 C.F.R. § 109.21(c); and (3) it satisfies at least one of six "conduct" standards in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a).

In this matter, both the payment and content prongs are satisfied. The Fund paid for the advertisements.⁶ See 11 C.F.R. § 109.21(a)(1). According to the Fund's reports to the Commission, these ads expressly advocated the defeat of Renacci's opponent. See *id.* § 109.21(c)(3); Fund 24-Hour Independent Expenditure Notices (Oct. 27 – Nov. 2, 2012).

⁶ The Fund's ads were not individually identified in the Complaint, which referenced "the Congressional Leadership Fund's latest ads." See Compl. at 2. These ads appear to correspond to the Fund's independent expenditures in opposition to Sutton disclosed on October 29 and November 2, 2012, totaling \$367,079.60. See *supra* chart of the Fund's independent expenditures.

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1 The conduct prong, however, is not met. Commission regulations set forth six
2 types of conduct that satisfy the conduct standard: (1) request or suggestion; (2) material
3 involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and
4 (6) republication. 11 C.F.R. § 109.21(d).

5 The material involvement standard is satisfied when a candidate or authorized
6 committee is materially involved in decisions regarding: (1) the content of the
7 communication; (2) the intended audience for the communication; (3) the means or mode
8 of the communication; (4) the specific media outlet used for the communication; (5) the
9 timing or frequency of the communication; or (6) the size or prominence of a printed
10 communication, or duration of a communication by means of broadcast, cable, or
11 satellite. 11 C.F.R. § 109.21(d)(2). The Commission has noted that coordinating
12 advertising schedules could satisfy the "material involvement" conduct standard. *See*
13 *Coordinated Communications E&J*, 68 Fed. Reg. 421, 434 (Jan. 3, 2003). This standard
14 is not satisfied, however, if the information material to the creation, production, or
15 distribution of the communication was obtained from a publicly available source.
16 11 C.F.R. § 109.21(d)(2).

17 The Complaint alleges that the Fund and the Renacci Committee were "materially
18 involved" with each other's television ad timing, intended audience, and means of
19 communication. The Complaint draws this inference of coordination based solely on the
20 asserted changes in Respondents' ad buys. The Complaint argues that Respondents
21 "must have been 'materially involved'" with one another's decision-making "[d]ue to the
22 seamlessly speedy manner in which Renacci's ads were replaced in less than 24 hours."
23 Compl. at 2. The Complaint describes the timing as "extremely odd," which "smacks of

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1 more than just coincidence” and therefore “leads [Complainant] to believe that there was
2 coordination” between the Renacci Committee and the Fund. *Id.*

3 The inference, however, is not supported by any available information. To the
4 contrary, the available information refutes the Complaint’s assertion that the Renacci
5 Committee was “materially involved” in the Fund’s decision to purchase additional
6 advertising. *See* 11 C.F.R. § 109.21(d)(2).

7 The Fund provides a sworn affidavit saying that it decided to increase its
8 advertising based on commercially available data showing that organizations supporting
9 Sutton or opposing Renacci had purchased significant television advertising time.⁷ Fund
10 Resp. at 7; Walsh Aff. ¶¶ 7-8. According to the Fund, “some time on or about
11 October 23, [it] directed [American Media] to purchase an additional \$300,000 in
12 television advertising.” Fund Resp., Walsh Aff. ¶ 8. Further, the Renacci Committee’s
13 response, although unsworn, provides details about its decisions concerning its
14 advertising purchases that undercut the Complaint’s surmise that the Fund’s payment was
15 “more than just coincidence.” Accordingly, we believe there is no reason to conclude
16 that the material involvement standard is met in this matter.⁸

⁷ Independent expenditures opposed to Renacci between October 23 and the November 6, 2012, election total over \$2.4 million for “television advertising” and “media buy[s].” The Commission’s database does not show any independent expenditures during this period for these purposes in support of Sutton.

⁸ Neither does the available information meet any other conduct standards. For example, the Renacci Committee did not make any disbursements to the Fund’s media vendors including American Media. *See* 11 C.F.R. § 109.21(d)(4) (common vendor conduct standard). And the Fund’s ads, all of which attack Sutton for voting with Nancy Pelosi and do not mention Renacci, are dissimilar to Renacci Committee ads, which make no mention of Pelosi. *See* <http://www.congressionalleadershipfund.org/ads/>, <http://www.renacciforcongress.com/blog/blog.aspx?Month=10&Year=2012>. *See id.* § 109.21(d)(6) (republishment conduct standard).

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In sum, it does not appear that the Fund coordinated its communications with and thereby made an in-kind contribution to the Renacci Committee. Thus, we recommend that the Commission find no reason to believe that the Fund violated 2 U.S.C. § 441a(a) by making excessive contributions and find no reason to believe that the Renacci Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions.

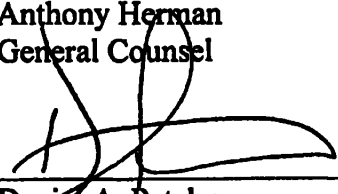
III. RECOMMENDATIONS

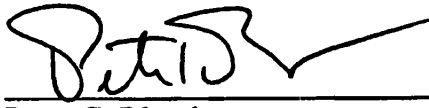
1. Find no reason to believe that the Congressional Leadership Fund and Caleb Crosby in his official capacity as treasurer violated 2 U.S.C. § 441a(a).
2. Find no reason to believe that Jim Renacci for Congress and Russell Corwin in his official capacity as treasurer violated 2 U.S.C. § 441a(f).
3. Approve the attached Factual and Legal Analysis;
4. Close the file; and
5. Approve the appropriate letters.

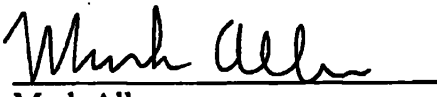
04/22/13
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